IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT **PETITION NO.2937 OF 2005**

Sanjay Kumar Rai ..Petitioner

Vs.

Union of India & Ors. ..Respondents

Mr. Amol B. Desai, for the Petitioner
Mr.N.R. Prajapati with Mr. Y.S. Bhate, for the Respondents.

CORAM: **F.I. REBELLO &**
ANOOP V. MOHTA**, JJ.**
DATE: 7TH NOVEMBER,2006

P.C.

. The petitioner was working with the Central Industrial Security Force and at the relevant time was posted at the Domestic Airport Terminal at Mumbai. A charge sheet was issued to him wherein he was charged for acts of misconduct. The petitioner's say was called for. An enquiry was conducted at which the witnesses were examined on behalf of the Department. The Enquiry Officer based on the evidence held the charges as proved. The main charge was that on 27th February, 2004 one Odedra V., a British National had complained that an amount of 2595 Pounds was missing from his waist-pouch which he had left at the Airport when he had boarded the flight for Jamnagar. In the report submitted by the Enquiry Officer based on the evidence of the witnesses who were examined the enquiry officer held

that it is proved that the Charged Officer opened the waist-pouch on his own without getting other persons as witnesses though they were readily available and that he further handled the contents of the waist pouch then zipped it and thereafter placed it behind the sofa without making any efforts to locate the owner of the pouch or deposit it with the Airport Manager immediately. The findings were also recorded in respect of each of the charges. The petitioner was called upon to give his say on the said finding. The petitioner gave his say. The Disciplinary Authority by an order dated 18th February, 2005 after considering the finding of the enquiry officer including the representation made by the Charged Officer, came to the conclusion that the charges had been proved and considering the findings of the enquiry officer in respect of all the charges and the fact that the Charged Official Inspector was a member of a Disciplined force held the Charged Officer as unsuitable to be retained in an Armed Force of the Union of India and imposed the penalty of dismissal. The petitioner being aggrieved preferred an Appeal. The Appellate Authority by order dated 16th August, 2005 briefly set out the contentions urged on behalf of the petitioner herein in para.4 and after considering the contentions and the records and proceedings, held that the petitioner had been given all relevant documents as requested and he was further provided an opportunity of cross examination

of the departmental witnesses and copies of the statement of P.W.1 had been given to him as also the finding of the Enquiry Officer and accordingly held that there was no denial of natural justice. The Appellate Authority further held that the evidence on record clearly established the guilt of the delinquent officer and considering the gravity of the misconduct and the charges proved choose not to interfere with the same. It is this order which is the subject matter of the present petition. It appears that the petitioner had also filed a Review Petition, which Review during the pendency of this petition has also been rejected.

2. At the hearing of this petition on behalf of the petitioner it was submitted that his was a case of victimisation by Shri A.S. Zafarullah, Commandant. However, in the evidence it has come on record that the grievance of the charged official in his defence was that Shri Vishnu Swarup, P.W. 7 who had visited the SHA I A in an angry mood and called the Sub Officers and threatened them to depose in their statements in such a manner that they could be saved and the charged official alone could be blamed. On the face of this stand of the petitioner the present contention of victimisation at the hands of Shri A.S. Zafarullah must be rejected. It was then contended that the petitioner had sought examination of witnesses. That aspect has been dealt with by the

enquiry officer. The charged official has submitted an application to examine Shri Odedra V., who was not available as also Mr.A.S. Zafarullah. The enquiry officer rejected the application as the concerned officer was not at the site and as such that would not prejudice the defence of the petitioner herein.

3. From the record it is clear that the petitioner was given full opportunity, the documents were made available and witnesses examined were made available for cross examination. The petitioner was given an opportunity to lead his evidence. We do not find that the enquiry suffers from any violation of principles of natural justice and/or fair play nor has anything been pointed out to show, that there is a breach of any of the Rules pertaining to conduct of the enquiry.

4. A Writ Court in exercising jurisdiction does not sit in Appeal over the findings of the domestic Tribunals unless perverse. In our opinion considering the post held by the petitioner, we do not think this to be a fit case to interfere with the punishment imposed. No interference called for.

Petition dismissed.

(**F.I. REBELLO, J)**

(**ANOOP V. MOHTA J).**